

No. 15,644

IN THE  
**United States Court of Appeals  
For the Ninth Circuit**

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MARION S. FELTER, on behalf of himself and  
others similarly situated,

*Appellant,*

vs.

SOUTHERN PACIFIC COMPANY, a corporation;  
BROTHERHOOD OF RAILROAD TRAINMEN, a  
voluntary association; J. J. CORCORAN, as  
General Chairman, General Committee,  
Brotherhood of Railroad Trainmen; J. E.  
TEAGUE, as Secretary, General Committee,  
Brotherhood of Railroad Trainmen,

*Appellees.*

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**APPELLANT'S REPLY BRIEF.**

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THE ULTIMATE ISSUE IS WHETHER THERE IS ANY AUTHORITY FOR THE CONTINUED DEDUCTION OF APPELLANT'S WAGES.

The appellees state that the *sole* issue is whether the Dues Deduction Agreement places an unreasonable burden upon the exercise of an employee's right to change unions. The applicable law and the facts of this case do not support this assertion, which misdescribes the issue here.

The true issues that are involved are:

(1) Section 2, Eleventh (c) prohibits agreements providing for deduction and payment of dues to a labor organization other than that in which an employee holds membership. It is undisputed that appellant *has* withdrawn his membership in the Brotherhood of Railroad Trainmen (hereinafter called BRT). Therefore, the legality of appellees' conduct in continuing to deduct and receive a portion of appellant's wages must be determined.

(2) Section 2, Eleventh (b) of the Railway Labor Act provides that an employee may revoke his wage assignment authorization a year after its execution. It is undisputed that appellant did submit a written revocation more than a year subsequent to signing his authorization. Hence, the legality of the continued deduction and receipt of appellant's wages must be determined.

With respect to the issue designated as (1) above, the answer of the BRT admits that appellant, on and after March 1, 1957,<sup>1</sup> was no longer a member of that labor organization (R. 7, 36). After having so admitted, the BRT places its refusal to honor appellant's revocation *solely* on the basis that the revocation "was not handled through the designated secretary and treasurer" of the BRT (R. 36). There thus can be no question that the BRT in this case is in-

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<sup>1</sup>The reference in the record at page 7 thereof to March 1, 1956, is obviously a typographical error, and should read March 1, 1957.

sisting upon, as a matter of law, the right to receive dues and other payments from an employee whom it admits is not a member of the BRT. This insistence and the actual receipt of such monies is a direct violation of Section 2, Eleventh (c) of the Act.

In this state of facts it matters not that appellee Southern Pacific Company may not have had actual proof of appellant's withdrawal from the BRT at the time it deducted dues from his wages and paid them over to the BRT. Both appellees rely upon an interpretation of the Dues Deduction Agreement which they maintain permits their conduct despite the admitted fact by the BRT that appellant was no longer its member. It is for this reason, among others, that appellant asserts that the Dues Deduction Agreement is invalid under the Act. The Act specifically provides that no such agreement may provide for deduction of dues and the like "*payable* to an organization other than that in which (an employee) holds membership." Yet appellees have so applied their Dues Deduction Agreement, contrary to the express provisions of the Act. It is, therefore, an unlawful agreement and neither appellee may escape this result by the argument that the Company had no proof that appellant was not a member of the BRT.

Manifestly, Congress did not intend that an employer could continue to deduct dues from an employee's wages and that a labor organization could continue to receive those dues for so long as the labor organization, with full knowledge of the fact, failed to advise the employer that the employee was not a

member of that union. And any agreement between the employer and the union which permits such a result, as it did here, is plainly in contravention of the Act.

Nor is this case controlled by *Pennsylvania R. R. Co. v. Rychlik*, 352 U.S. 480, cited by appellees, and that case is not in point to any issues in this case. The *Rychlik* case, supra, concerned the legality of a discharge under a union shop agreement. The Court merely held that in the exercise of the right to change unions, the union selected must be a labor organization which is "national in scope" in order to qualify under the Act; the term "national in scope" was interpreted to include only those unions qualified to elect representatives to the National Railroad Adjustment Board.

Whether or not appellant and others similarly situated had desired to change unions has no bearing on their rights under the Act as individual employees to revoke their dues deduction authorizations. These rights are as fully applicable to employees who choose to remain members of the union as they are to those who may decide to make a change. Such union members may pay dues directly to the union or decide to authorize deduction of dues from wages. The Act gives that choice only to the individual employee, and whichever choice is made only he may change it, and he may do it in the manner prescribed by the Act without interference from the union or the carrier. The holding in the *Rychlik* case, supra, is thus entirely beside the issue in the instant matter.

The critical issue here is whether the appellant, in revoking his dues deduction authorization, is entitled to the protection afforded by the provisions of the Act; and, if so, whether any legal justification may be found for the refusal of the appellees to give effect to that revocation.

In their briefs the appellees purport to find this justification in two provisions of the Dues Deduction Agreement:

- (1) That revocations must be transmitted to the Company only through the BRT.
- (2) That revocations must be on cards reproduced and furnished by the BRT.

Neither of these purposed "requirements" provides any semblance of justification for not terminating the wage deductions in accordance with appellant's revocation, and as required by Section 2, Eleventh (b) of the Act.

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**THE REFUSAL TO HONOR APPELLANT'S REVOCATION CAN-NOT BE JUSTIFIED ON THE GROUNDS THAT THE DUES DEDUCTION AGREEMENT REQUIRES REVOCATIONS TO BE SUBMITTED TO THE COMPANY THROUGH THE BRT.**

The Company, in its brief, devotes considerable space to arguing the desirability from its standpoint of having the BRT take the responsibility for processing all revocations (Company's Brief, pp. 7-8). The short answer to this contention might well be that the Company cannot so abdicate its responsibility as to deprive individual employees of their rights under the Act.

But more importantly, the record herein precludes any reliance on any such requirement. The fact is that the BRT had in its possession not one, but two revocation cards executed by the appellant. One of these cards was submitted directly to the BRT (R. 23-24, 67). The other card, sent by the appellant to the Company, was forwarded by the Company to the BRT for inclusion on the list "of employees from whose wages no further deductions (were) to be made" (R. 28-29, 67).

It is, therefore, apparent that this Dues Deduction Agreement provision, even if valid, provides no justification for the failure to give effect to appellant's revocation.

The BRT in its brief argues that it is not a burden for "a member to ask his union" for the revocation card. The very point involved is that appellant was *not* a member of the BRT and it was not "his union." The fact of this severance of membership relations goes to the heart of the realities of industrial relations life involved in this case. Appellant was a non member of the union and it became the interest of the BRT to place obstacles in his path, and the requirement that appellant submit himself to the grace of the BRT to get a release of his own money is *per se* coercive under the circumstances. Moreover, it is not true that the BRT "immediately" gave him that release "without comment" (BRT Brief, p. 11). The fact is that although it had in its possession appellant's revocation card in proper form, the BRT refused to send it to the Company, and instead appell-

lant was advised he would have to wait at least another month to be released of his wage assignment and then only if he made out and submitted to the BRT another identical card, differing only in that it was printed by the BRT. While appellant was thus forced to cool his heels at the whim of the BRT, he was told that the BRT "hoped" that he would "re-consider" (R. 25).

This was, indeed, the kind of "interference" which, if present, the BRT concedes would give grounds for maintaining appellant's rights under the law had been obstructed (BRT Brief, p. 12). Not many employees under such conditions would persevere in this battle of wits with a powerful union, and under normal conditions the BRT would succeed in such tactics. It is to prevent such practices against any employee who seeks to assert his individual rights under the law, that appellant has brought this action.

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**THE REFUSAL TO HONOR APPELLANT'S REVOCATION CAN NOT BE JUSTIFIED ON THE GROUNDS THAT REVOCATIONS CAN BE MADE ONLY ON CARDS "REPRODUCED AND FURNISHED" BY THE BRT.**

Appellees in their briefs make continual reference to the necessity of establishing some "orderly procedure" as to the manner in which revocations must be made. This is said to be necessary in order to facilitate the requisite bookkeeping entries and changes in personnel records. It is noteworthy that Congress did not deem it necessary to prescribe any intricate revocation process. But even assuming

appellees' point is well taken, under the facts herein, no justification for the refusal to honor appellant's revocation may be found.

As found by the Court below, the revocation cards submitted were identical in form to those assertedly required by the Dues Deduction Agreement (R. 67). No contention is made that the precise information and data required to effect any changes in personnel records were not fully supplied. Nor is there any dispute as to the timeliness of the revocations.

The sole basis for the refusal is the fact that the revocation cards were not "reproduced and furnished" by the BRT. But the fact that the revocation cards were not printed at the expense of the BRT is totally unrelated to any administrative paper work required. Equally irrelevant to any necessary record keeping is whether the blank revocation card forms in the first instance are obtained from the BRT.

Thus, while appellees disclaim any intent to frustrate the employees' desire to discontinue the dues deduction, one may logically ask what then is the purpose of the requirement that only a revocation card granted at the grace of the BRT will be accepted?

Appellees contend for the "right" of the BRT to be "assured" that a revocation is "the result of a considered decision of the employee" (Company's Brief, pp. 8-9; BRT Brief, p. 11). The Act plainly does not contemplate that a union, with a real financial interest in the matter, shall sit in judgment as to whether the

revocation represents such a "considered decision." Congress did not intend that only such revocations are to be effective which, to the satisfaction of the union, are deemed executed with sufficient solemnity.

The BRT in its brief assumes unto itself the right to determine that the employee has not been the "victim of a raid" or has not been "high pressured" or "unduly influenced" (BRT Brief, p. 11). Presumably this means that if the BRT, a highly interested adverse party, decides that the employee has been "unduly influenced," it will refuse to act upon the revocation even though, admittedly, the employee involved is not a member of the BRT, and the revocation is in proper form. Thus, the control sought to be exercised here over the individual employee is real and it is serious. This intent to exercise a veto power over the individual employee is affirmed in strong terms by the appellees themselves in arguing to this Court that they be permitted to continue to enforce their Dues Deduction Agreement in this manner. Plainly, this is not what Congress had in mind when the provisions of the law here involved were adopted after it had been reiterated in the congressional debates that it was "*wholly and entirely* within the discretion of the employee" as to whether his union dues were to be deducted from his wages by an employer and paid over to a labor union (Appellant's Opening Brief, Appendix p. vi). By the Act, individual employees were carefully protected from this kind of union control over their free right to revoke dues deduction authorizations.

Equally unconvincing is appellees' argument that the requirement that revocation cards be secured from the BRT is necessary in order to preclude forgeries. Such reasoning, if followed, would enable unions to require that revocations be accompanied by verifying affidavits or to otherwise further stultify the intent of the law. No reason suggests itself why the Union rather than the Company is in a better position to detect forgery of an employee's signature. Congress thought it adequate that revocations be made in writing and did not intend that this right be nullified by the imposition of additional onerous or frustrating restrictions imposed by labor organizations or by private agreements between employers and unions, as in this case.

In view of the otherwise complete irrationality of requiring that revocation cards be "furnished" only by the BRT, the conclusion is irresistible that its purpose and effect can only be to enable the BRT to delay or frustrate revocations until such time as it is able to exert sufficient pressure on the employees, or confront them with so many obstacles that they will abandon their efforts.

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**APPELLANT IS NOT "BOUND" BY THE REVOCATION PROVISION OF THE DUES DEDUCTION AGREEMENT.**

The Company argues that the appellant is bound by the terms of whatever agreement the BRT, as collective bargaining representative, has entered into with the Company (Company's Brief, p. 11). In so

doing the Company ignores the very purpose which Congress evidenced in surrounding the check-off system with safeguards. The whole purpose in inserting the requirements of individual authorizations, and conferring the right of individual revocation, was to remove the check-off system from the exclusive control of carriers and labor organizations. In the words of Senator Hill, at the end of a year if an employee "does not like the way it works" he can put an end to his dues deduction (see Appellant's Opening Brief, Appendix, pp. vi, vii). That is all that appellant seeks here, and he has not been accorded that statutory right.

Obviously the BRT, as collective bargaining representative, could not enter into an agreement with the Company purporting to make wage assignment authorizations *irrevocable* and thereby bind the employees. It is equally clear that employees are not bound by provisions in agreements which serve no purpose other than to place obstacles in the path of freely exercising their right of revocation.

Appellees further argue that appellant by initially submitting his Wage Assignment Authorization "ratified and accepted" the terms of the Dues Deduction Agreement pertaining to revocation (Company's Brief, p. 11). This argument overlooks the express language of the Wage Assignment Authorization, which provides:

"This authorization may be revoked by the undersigned in writing, after the expiration of one (1) year, or after the termination date of the afore-

said deduction agreement, or upon the termination of the rules and working conditions agreement, whichever occurs sooner." (R. 78-79.)

Beyond the authorization which appellant signed there is nothing in this record to show that appellant ever saw the Dues Deduction Agreement or knew of its terms.

It is thus clear that no limitation was placed on the revocability of these authorizations or consented to by appellant, save those contained in the Railway Labor Act itself. No reference is made in the Wage Assignment Authorization which appellant signed to any requirement that revocation could be made only on cards which had been printed by the BRT, and which had been secured from that organization. Appellant, therefore, bound himself by his written consent only to what the Act specifies, and nothing more.

It is specious to argue that in executing these authorizations appellant thereby bound himself to revocation procedure assertedly required by the Dues Deduction Agreement. This is particularly true in view of the peculiar wording of that portion of the agreement relied upon by the appellees, Section 1(c). Section 1(c) is couched entirely in terms of determining responsibility as between the BRT and the Company (R. 75). On the other hand, that portion of the agreement dealing directly with revocation is Section 1(b) (R. 74-75). This section, as with the Wage Assignment Authorization, merely restates the express requirements of the Act with respect to the

elapsed period prior to revocation and that the revocation shall be in writing. The only additional requirement of this section of the Agreement is that revocations be in the form of Attachment "B" cards, and there is no dispute as to the fact that appellant's revocation was made in this form, even assuming the validity under the Act of such a requirement.

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#### CONCLUSION.

Despite all of their protestations as to the "reasonableness" of their Dues Deduction Agreement, the fact remains that appellees have continued to deduct and receive portions of appellant's wages solely because of the fact that his revocation card was not first secured from the BRT, and despite the fact that appellant was not a member of the BRT, of which fact appellee BRT had direct knowledge.

A requirement such as this that an employee must run the gamut of obstacles placed in his way by the very organization from which he has severed connections, is inherently repugnant to accepted ideas of freedom of choice. If such a capricious rule as this is permitted under the law, then no end of clever devices can be hereafter constructed to hamstring an employee, once he has committed himself to having his dues deducted from his pay. Congress foresaw this problem when it unequivocally and unconditionally granted the full right of revocation to the individual employee. This right may not be tampered with under color of any excuse, either by carriers or

labor organizations who are subject to provisions of the Railway Labor Act.

We submit that the action of appellees in refusing to honor appellant's written dues deduction revocation is violative of the express language and purpose of the Railway Labor Act, and is in denial of appellant's rights thereunder.

Dated, San Francisco, California,  
April 14, 1958.

Respectfully submitted,  
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